

OFFICE OF THE DISTRICT ATTORNEY
WESTCHESTER COUNTY



WESTCHESTER COUNTY COURTHOUSE
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JANET DiFIORE
DISTRICT ATTORNEY

MEMO ENDORSED

September 19, 2007

Hon. Charles L. Brieant
United States District Judge
United States District Court
Southern District of New York
United States Courthouse
300 Quarropas Street
White Plains, New York 10601

Re: Selwyn Days v Graham
07 Civ. 7484 (CLB)

Your Honor:

*Application Granted -
Submit a written statement
report to the Clerk by
October 19, 2007. Joseph M. Latino
to Michael J. Feltman 9/27/07 1058J*

On September 12, 2007 we received the Court's Rule 4 order dated September 4, 2007, and a copy of the petition for habeas corpus relief. Point Four of the petition is the unexhausted claim of ineffective assistance of trial counsel for an alleged failure to investigate or use an alibi defense.

That claim is unexhausted because on September 18, 2007, the District Attorney was served with the defendant's motion to vacate judgment pursuant to CPL 440.10, on the ineffective assistance ground which is Point Four of the instant petition.

In order to avoid piecemeal litigation of this petition, the District Attorney requests that the petition be held in abeyance pending disposition of the CPL 440.10 motion in state court, which is presently returnable on October 18, 2007.

We suggest that respondent's time to answer this petition be extended to 30 days after the Appellate Division had denied leave to appeal a denial of the CPL 440 motion, or 30 days after petitioner's time to seek leave to appeal a denial has run (petitioner would have 30 days to seek leave to appeal from service of the order upon him).

Thank you for your consideration of this matter.

Very Truly Yours,

JANET DiFIORE
DISTRICT ATTORNEY

Joseph M. Latino
Assistant District Attorney

cc: Selwyn Days
04 A 3603
Auburn Correctional Facility